

## Wage and Hour Division, Labor

## § 575.2

(iii) The level and type of pesticides and other chemicals used would not have an adverse effect on the health or well-being of the individuals to whom the waiver would apply;

(iv) Individuals age 12 and above are not available for such employment; and

(v) The industry of such employer or group of employers has traditionally and substantially employed individuals under 12 years of age without displacing substantial job opportunities for individuals over 16 years of age.

(B) Any waiver granted by the Secretary under subparagraph (A) shall require that:

(i) The individuals employed under such waiver be employed outside of school hours for the school district where they are living while so employed;

(ii) Such individuals while so employed commute daily from their permanent residence to the farm on which they are so employed; and

(iii) Such individuals be employed under such waiver (I) for not more than 8 weeks between June 1 and October 15 of any calendar year, and (II) in accordance with such other terms and conditions as the Secretary shall prescribe for such individuals' protection.

(b) The child labor provisions of the Fair Labor Standards Act, section 12, require the following age standards for employment in agriculture:

(1) 16 years of age in any occupation at any time;

(2) 14 and 15 years of age outside of school hours except in occupations found and declared by the Secretary to be particularly hazardous for the employment of minors under 16 years of age (subpart E-1, 29 CFR 570.70, *et seq.*);

(3) 12 and 13 years of age in nonhazardous occupations outside of school hours if:

(i) Such employment is with the written consent of a parent or person standing in the place of a parent of such minor, or

(ii) Such employment is on the same farm where such parent or person is also employed;

(4) Under 12 years of age in nonhazardous occupations outside of school hours if such employment is with the written consent of a parent or person standing in place of a parent of such minor, on a farm where, because of the provisions of section 13(a)(6)(A) of the Act, none of the employees are required to be paid at the wage rate prescribed by section 6(a)(5) of the Act;

(5) 10 and 11 years of age in nonhazardous occupations outside of school

hours employed to hand-harvest short season crop or crops under a waiver issued pursuant to section 13(c)(4) of the Act and this part:

(6) Minors of any age may be employed by their parents or persons standing in place of their parents at any time in any occupation on a farm owned or operated by their parents or persons standing in place of their parents.

(c) This part provides the procedures to be used under section 13(c)(4) of the Act. This part describes the information and defines the supporting data that the employer or group of employers must submit when applying for a waiver of the child labor provisions for the employment of 10 and 11 year old minors as hand-harvest laborers in an agricultural operation. It further explains the specific requirements imposed by the statute for employment under a waiver and specifies the conditions prescribed by the Secretary for employment under a waiver.

### § 575.2 Definitions.

As used in this part:

*Act* means the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, as amended; 29 U.S.C. 201, *et seq.*).

*Administrator* means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, and includes an authorized representative designated by the Administrator to perform any of the functions of the Administrator under this part.

*Agriculture* means agriculture as defined in section 3(f) of the Act and as interpreted in part 780 of this chapter.

*Commute daily* means the minors shall travel by foot, car, or other vehicle designed for transporting passengers from their permanent residences to the field or farm where they will work and return thereto at the end of each workday.

*Department* means the U.S. Department of Labor.

*Employer* means employer as defined in section 3(d) of the Act.

*Group of employers* means a number of employers who seek to be considered together for the purpose of applying for a waiver under section 13(c)(4) of the Act.

### § 575.3

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*Hand-harvest laborers* means agricultural workers engaged solely in harvesting by hand soil grown crops such as but not limited to berries, potatoes, and beans, and as interpreted in § 780.312 of this chapter.

*Outside school hours* means such periods as determined by the school district of the minor's permanent residence. These periods include before or after school hours, holidays, summer vacation, Saturdays, Sundays, or any other days on which the school for the school district does not assemble.

*Permanent residence* means the place where the minor and the minor's parent or person standing in place of a parent reside year-round.

*Secretary* means the Secretary of Labor, United States Department of Labor, or an authorized representative of the Secretary.

*Waiver* means a letter signed by the Administrator advising the named employer or group of employers that 10 and 11 year old minors may be employed in the hand-harvesting of the specified short season crop or crops for the period designated, in accordance with the terms and conditions set forth in section 13(c)(4) of the Act and this part.

[43 FR 26562, June 21, 1978; 43 FR 28471, June 30, 1978]

#### § 575.3 Application for waiver.

(a) An application for a waiver shall be filed with the Administrator of the Wage and Hour Division, Employment Standards Administration, United States Department of Labor, Washington, DC 20210. To permit adequate time for processing, it is recommended that such applications be filed 6 weeks prior to the period the waiver is to be in effect.

(b) No particular form is prescribed. The application, which may be in letter form, shall be typewritten or clearly written and shall include the following information:

(1) The general information as described in § 575.4 of this part:

- (i) Name and address of employer or group of employers;
- (ii) Telephone number;
- (iii) Location of farm(s);
- (iv) Crop or crops to be hand harvested;

(v) Whether payment is customarily paid on a piece rate basis;

(vi) Requested period of waiver;

(vii) Statement that such employment shall be outside school hours;

(2) The objective data as required in § 575.5 of this part to show that:

(i) The crops have a short harvesting season;

(ii) Without 10 and 11 year olds the industry would suffer severe economic disruption;

(iii) Employment will not be deleterious to the health and well-being of 10 and 11 year olds;

(iv) The level of pesticides will not adversely affect 10 and 11 year olds;

(v) Individuals 12 years and over are not available for employment;

(vi) Employer or group of employers has traditionally used minors under 12 years and this will not displace employees 16 years or older.

(c) The application shall be signed and dated by the employer or group of employers requesting the waiver or by the authorized representative of such employer or group.

(Approved by the Office of Management and Budget under control number 1215-0120)

[43 FR 26562, June 21, 1978, as amended at 47 FR 145, Jan. 5, 1982]

#### § 575.4 Information to be included in application.

An application for a waiver pursuant to section 13(c)(4) of the Act shall contain the following information:

(a) The name, address, and zip code of the employer, or each employer of a group of employers, and the authorized representative, if any, of an employer or group.

(b) The telephone number and area code for any employer or authorized representative from whom additional information concerning the application may be obtained.

(c) The address, location, and/or area (State, county, and/or other geographic designation), clearly identifying each employer's farm(s) or field(s) where 10 and 11 year old hand-harvest laborers are to be employed.

(d) The specific crop or crops to be hand-harvested at each designated farm or field.